

SEP 27 2007

NOT FOR PUBLICATION

**UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

**CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS**

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

RICARDO SILVA-VALENCIA,

Defendant - Appellant.

No. 07-50125

D.C. No. CR-06-1227-JAH

MEMORANDUM*

Appeal from the United States District Court
for the Southern District of California
John A. Houston, District Judge, Presiding

Submitted September 24, 2007**

Before: CANBY, TASHIMA, and RAWLINSON, Circuit Judges

Ricardo Silva-Valencia appeals the sentence imposed following his guilty plea to being a deported alien found in the United States in violation of 8 U.S.C. § 1326. As Silva-Valencia acknowledges in his citation of supplemental

* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

** This panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

authorities, our recent decision in *United States v. Diaz-Luevano*, No. 05-50129, 2007 WL 2044256 (9th Cir. July 18, 2007) (per curiam), forecloses his contention that the district court erred in increasing his maximum sentence on the basis of a reinstatement of an immigration judge's removal order. As he acknowledges in his opening brief, his contention that the district court violated his constitutional rights by increasing his statutory maximum on the basis of a prior conviction neither alleged in the indictment nor admitted also is foreclosed. *See United States v. Grisel*, 488 F.3d 844, 846 (9th Cir. 2007) (en banc).

AFFIRMED.